



SENATE BILL 439: Amend & Restate NC Limited Liability Co. Act

2013-2014 General Assembly

Committee:	Senate Judiciary I	Date:	April 19, 2013
Introduced by:	Sens. Clodfelter, Barringer, Brunstetter	Prepared by:	Bill Patterson
Analysis of:	PCS to First Edition S439-CSTG-26		Committee Counsel

SUMMARY: *The PCS to Senate Bill 439 rewrites the North Carolina Limited Liability Company Act. The PCS adds rules governing priority of multiple charging orders and conflicts between different provisions in the LLC's governing agreements.*

CURRENT LAW: The North Carolina Limited Liability Company Act, codified as Chapter 57C of the General Statutes, governs the creation, operation, and dissolution of limited liability companies.

BILL ANALYSIS: Section 1 of the PCS repeals Chapter 57C in its entirety, and Section 2 reenacts it as Chapter 57D, with substantial revisions, including:

- Operating agreements would not have to be in writing; they could be established in the same ways as any contract: written, oral, or implied assent among the parties to the contract
- Rights and duties of parties as set forth in the Act could be freely modified, waived, or nullified by agreement
- Unwritten provisions in the operating agreement would not be permitted to vary or nullify any inconsistent or contrary provision in the operating agreement to the detriment of non-parties to the operating agreement, and in the event of a conflict between the operating agreement and any document filed by the LLC with the Secretary of State, the operating agreement would prevail as to members, managers and company officials, and the document filed with the Secretary of State would prevail as to non-parties to the operating agreement to the extent of their reasonable reliance upon the filed document **(added by the PCS)**
- The priority among multiple charging orders would be determined by the date of service of the charging order upon the LLC, except that a charging order would relate back to the date of service of garnishment process previously issued in the same proceeding as the charging order **(added by the PCS)**
- New defined terms are added to provide a more detailed framework for carrying out the ownership and management of LLCs
- Provisions relating to low-profit LLCs are deleted
- Provisions are added to clarify matters that may be agreed upon by members, including:
 - Management duties
 - Exculpation and indemnification
 - Penalties
 - Alternative dispute resolution
 - Information access rights
- Provisions governing foreign LLCs would be harmonized with their counterparts under the Business Corporations Act
- Various provisions of the Act would be clarified and coordinated with relevant State and federal law



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Sections 3 through 30 make various conforming changes to other statutory provisions.

Sections 31 and 32 exempt ownership interests in LLCs from UCC Article 9 provisions that might result in encumbrances to a member's economic interest in breach of the operating agreement, which could adversely affect the interest of the other members

EFFECTIVE DATE: This act becomes effective January 1, 2014, except as otherwise provided in new Chapter 57D, Article 11 (Transition Provisions).

BACKGROUND: Senate Bill 439 is the product of four years of work by the LLC Act Revisions Task Force of the North Carolina Bar Association's Business Law Section.